

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

S.L., by and through his parents and guardians,
J.L. and L.L.,

Case No. C18-1308-RSL

Plaintiff,

V.

PREMERA BLUE CROSS, et al.,

**ORDER GRANTING
PLAINTIFF'S MOTION TO
COMPEL AND DENYING
DEFENDANTS' MOTION
TO STRIKE**

Defendants.

This matter comes before the Court on (1) plaintiff's "Motion to Compel Production" (Dkt. #28) and (2) defendants' "Motion to Strike Report of Dr. Louis J. Kraus" (Dkt. #38). Having reviewed the motions, exhibits, and the record contained herein, the Court finds as follows:

I. BACKGROUND

This action arises under the Employee Retirement Security Act of 1974 (“ERISA”). Dkt. #1. Plaintiff S.L., by and through his parents, seeks coverage for his mental health treatment at Catalyst, a residential treatment center in Utah. *Id.* Plaintiff received coverage under the Amazon Corporate LLC Group Health and Welfare Plan (“the Plan”) through his father, an Amazon employee. *Id.* at ¶ 1, 13. Amazon Corporate LLC (“Amazon”) self-insures and administers the Plan, and Premera Blue Cross (“Premera”) serves as the claims processor. *Id.* at ¶¶ 2-4.

1 Prior to receiving treatment at Catalyst, plaintiff was treated at Northwest Behavioral
 2 Healthcare Services (“NBHS”) in January 2016 for “escalated substance use, anxiety, ADHD,
 3 suicidal ideation, and self harm.” Dkt. #29-9 (Ex. I). On February 18, 2016, plaintiff was
 4 transferred to Evoke Therapy Programs (“Evoke”), where he remained until May 16, 2016. See
 5 Dkt. #29-10 (Ex. J). Amazon covered the treatment at both NBHS and Evoke as medically
 6 necessary. Plaintiff began treatment at Catalyst on May 17, 2016.

7 On May 16, 2016, Premera denied the preauthorization request for plaintiff’s treatment at
 8 Catalyst as not medically necessary. See Dkts. #29-5 (Ex. E), #29-6 (Ex. F). On September 19,
 9 2016, plaintiff’s parents initiated a first-level appeal, see Dkt. #29-8 (Ex. H), which was denied
 10 on September 26, 2016, Dkts. #29-11 (Ex. K), #29-13 (Ex. M). Plaintiff’s parents subsequently
 11 proceeded with a second-level appeal on November 16, 2016, Dkt. #29-12 (Ex. L), which was
 12 denied on December 20, 2016, Dkt. #29-15 (Ex. O). Thereafter, plaintiff initiated this ERISA
 13 action to challenge defendants’ benefits determination. Dkt. #1.

14 **II. PLAINTIFF’S MOTION TO COMPEL PRODUCTION¹ (Dkt. #28)**

15 Plaintiff seeks discovery related to defendants’ adoption and utilization of the InterQual
 16 Criteria for claims processing. Plaintiff alleges that the information is relevant to his claims that
 17 defendants adopted and applied the InterQual Criteria in breach of their fiduciary duties, and
 18 that a structural conflict of interest adversely affected Premera’s benefits determination.
 19 Plaintiff served Second Requests for Production of Documents regarding the InterQual Criteria.
 20 See Dkt. #29-2 (Ex. B). Defendants objected to plaintiff’s requests, arguing *inter alia*, that
 21 plaintiff sought information outside the scope of the Federal Rules of Civil Procedure and
 22 discovery permitted under ERISA. Dkt. #29-3 (Ex. C). Defendants argue that plaintiff should

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 25 ¹ As a threshold matter, the Court notes that plaintiff violated the Local Rules of this District by
 26 filing an overlength motion without prior leave from the Court. Plaintiff’s motion exceeded the page
 27 limit by nine pages, but plaintiff’s counsel later indicated that the oversight was largely due to
 28 formatting issues. See Dkt. #33 (Glor Decl.). Given the circumstances, the Court will accept the
 overlength brief in this instance. Plaintiff is advised that further filings exceeding the page limits set
 forth in the Local Rules may be stricken. See LCR 7(e)(6).

1 not be permitted to conduct discovery of this information because evidence in this ERISA action
 2 is limited to the administrative record.

3 Plaintiff does not dispute that the Plan confers discretion on Premera to determine
 4 eligibility for benefits and to construe the terms of the Plan, and that accordingly, the standard
 5 for this Court's review is abuse of discretion. See Firestone Tire & Rubber Co. v. Bruch, 489
 6 U.S. 101, 115 (1989); Dkt. #28 at 13; Dkt. #1-1 at 3. When reviewing ERISA cases for abuse of
 7 discretion, courts are generally limited to the administrative record. See Abatie v. Alta Health &
 8 Life Ins. Co., 458 F.3d 955, 970 (9th Cir. 2006) (en banc). However, even under this deferential
 9 standard, limited discovery regarding the existence, extent, and effect of a conflict of interest on
 10 the part of the plan administrator has long been permitted in ERISA cases. See id. A "structural
 11 conflict of interest" arises in an ERISA case when an insurer serves as both the plan
 12 administrator and the funding source for benefits. See id. at 965. Although a self-insured
 13 disability plan can minimize the structural conflict of interest by delegating claim administration
 14 duties to a third-party, "[t]he delegation of claims to a third-party does not ensure against a
 15 structural conflict of interest because some employers may nevertheless influence the third-party
 16 administrator's decision making." Leu v. Cox Long-Term Disability Plan, No. 2:08-CV-00889-
 17 PHX-JAT, 2009 WL 2219288, at *2-3 (D. Ariz. July 24, 2009) (collecting cases) ("A *per se* rule
 18 that eliminates structural conflict upon delegation of claim administration seems contrary to the
 19 Ninth Circuit's broad statement that plaintiffs will have the benefit of an abuse of discretion
 20 review that always considers the inherent conflict when a plan administrator is also the
 21 fiduciary, even in the absence of smoking gun evidence of conflict." (internal quotation marks,
 22 alterations, and citations omitted)); see also Metro. Life Ins. Co. v. Glenn, 554 U.S. 105, 114-15.
 23 For this reason, the Plan's delegation of claims processing to Premera does not automatically
 24 allay concerns as to the potential existence of a structural conflict.

25 The Court is not persuaded by defendants' assertions that (1) no conflict of interest exists
 26 here, and (2) the discovery plaintiff seeks is irrelevant to any possible conflict of interest. Dkt.
 27 #31 at 6-12. Plaintiff has pointed to evidence showing that a conflict of interest may indeed
 28 have impacted defendants' benefits determination. For example, defendants denied coverage
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AND DENYING DEFENDANTS' MOTION TO STRIKE - 3**

1 because the information that Catalyst sent was “from 3 months ago and farther back” and did not
 2 include “information about [plaintiff’s] recent and current condition.” Dkt. #29-6 (Ex. F) at 1.
 3 But, at the same time, plaintiff has provided evidence that defendants allowed Catalyst only 90
 4 minutes to obtain the requested information from Evoke. Dkt. #29-7 (Ex. G) at 3 (“05/16/2016
 5 10:29[a] . . . I advised facility that if no clinical is rec’d by 12p PST today, case will be reviewed
 6 by AMD for a possible denial.”). In addition, plaintiff has shown that Premera’s first-level
 7 appeal reviewer considered records only from the day of plaintiff’s admission to Catalyst, Dkt.
 8 #11 (Ex. K), even though his parents provided additional medical documentation, Dkts. #29-8
 9 (Ex. H), #29-9 (Ex. I), #29-10 (Ex. J), and despite the fact that the so-called “look-back” period
 10 prescribed in the InterQual Criteria is 24 hours to six months. Dkt. #29-1 (Ex. A) at 3-5.
 11 Moreover, plaintiff has demonstrated that Premera’s second-level appeal panel did not include a
 12 mental health specialist, and that one of the appeal panelists expressed a strong disinclination for
 13 residential treatment centers, despite clear Plan language describing medically necessary
 14 coverage of residential mental health treatment. Dkts. #29-15 (Ex. O) at 1, #29-16 (Ex. P) (“The
 15 problem I have with [residential treatment centers] (*and why I don’t think they’re medically*
 16 *necessary*) is that a majority of their curriculum is spent doing things which on the surface don’t
 17 appear to be dealing with those issues. It’s basically a boarding school with some therapy
 18 sprinkled on top[.]” (emphasis added)); see also Dkt. #1-1 at 23.

19 Despite defendants’ assertions to the contrary, “[p]laintiff is not seeking to take discovery
 20 on the off chance that [he] will uncover a conflict of interest: [he] already has evidence of
 21 irregularities in the claims handling procedure that resulted in the [denial] of benefits.”

22 Vancleave v. Boeing Co. Non-Union Long Term Disability Plan, No. C09-1512RSL, 2010 WL
 23 8946093, at *2 (W.D. Wash. June 15, 2010). In determining the weight to assign to any
 24 potential conflict of interest and evaluating whether the administrator abused its discretion, the
 25 Court must consider all the facts and circumstances regarding the benefits determination. See
 26 Abatie, 458 F.3d at 967-68. The discovery plaintiff seeks is relevant and narrowly tailored to

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1 these issues, on which the Court will likely hear evidence.² See Vancleave, 2010 WL 8946093,
2 at *2. Accordingly, plaintiff's motion to compel production of documents responsive to his
3 Second Requests for Production is GRANTED.

4 **III. DEFENDANTS' MOTION TO STRIKE (Dkt. #38)**

5 Plaintiff included a September 4, 2019 report from Dr. Louis J. Kraus ("Kraus Report" or
6 "Report") as an exhibit to his motion to compel. See Dkt. #29-4 (Ex. D). Although defendants
7 do not object to the Court's consideration of the Kraus Report for purposes of plaintiff's motion
8 to compel, Dkt. #43 at 1 n.1, they move to strike the Report from the record for purposes of any
9 motion for summary judgment or trial. Id. at 1; see generally Dkt. #38. The Court agrees with
10 plaintiff that defendants' motion to strike is premature at this stage of the litigation. See Dkt.
11 #41 at 5. Accordingly, defendants' motion to strike is DENIED without prejudice to their
12 ability to renew the motion at the time of summary judgment briefing or trial.

13 **IV. CONCLUSION**

14 For all the foregoing reasons, plaintiff's motion to compel production of documents
15 responsive to his Second Requests for Production (Dkt. #28) is GRANTED. Defendants'
16 motion to strike the Kraus Report (Dkt. #38) is DENIED without prejudice.

17 DATED this 17th day of August, 2020.
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21 Robert S. Lasnik
22 United States District Judge
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² The Court notes that ERISA plaintiffs face a difficult task in showing an administrator abused
28 its discretion. Under these circumstances, however, this consideration does not diminish plaintiff's right
to the discovery he requests.